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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/915,400	07/27/2001	Robert W. Jeffway JR.	09148-004001	7101
26171	7590	11/19/2003	EXAMINER	
FISH & RICHARDSON P.C.			CAPRON, AARON J	
1425 K STREET, N.W.			ART UNIT	
11TH FLOOR			PAPER NUMBER	
WASHINGTON, DC 20005-3500			3714	

DATE MAILED: 11/19/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/915,400

Applicant(s)

JEFFWAY ET AL.

Examiner

Aaron J. Capron

Art Unit

3714

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 September 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3, 5, 8-14 and 16-18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3, 5, 8-14 and 16-18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

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DETAILED ACTION

This is a response to the Amendment received on September 2, 2003, in which claims 1 and 14 were amended and claims 4, 6-7, 15 and 19-26 were cancelled. Claims 1-3, 5, 8-14 and 16-18 are pending.

Claim Objections

Claim 5 is objected to because of the following informalities:

Claim 5 is dependent upon cancelled claim 4. Appropriate correction is required.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3, 5 and 8-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lebensfeld et al. (U.S. Patent No. 6,261,180; hereafter "Lebensfeld") in view of Jacobsen (U.S. Patent No. 5,785,592).

Referring to claims 1 and 9-11, Lebensfeld discloses an electronic toy gun that emits encoded IR beams, a trigger to activate the beam, a game data input device and an internal processor configured to receive game data input. The detector can determine the different codes. The coded information can include the source (player identification) of each hit that is registered.

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Lebensfeld further includes a feedback device that uses an LCD display to display corresponding player information (7:51, 8:37-9:8) and an audio device to include sound effects and speech phrases (3:28-31). Lebensfeld provides the toy gun having encoded beams having user selectable characteristics (abstract), but does not provide having user selectable game characters. However, Jacobsen provides an interactive target game system that allows users to shoot human players, video characters and fixed targets (Figure 1, items 64, 88 and 40). One would be motivated to combine the references in order to provide a more entertaining game for the entire family (1:15-25). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate the ability to allow users to shoot at video characters, as disclosed by Jacobsen, into the game of Lebensfeld in order to provide a more entertaining game for the entire family. Lebensfeld in view of Jacobsen discloses or suggests having the ability to use the toy gun to shoot characters within a video screen and having video game features (4:8-24), but does not disclose having user selectable game characters. However, it is notoriously well known within the art of video game to have the ability to select game characters, each game character having their specific characteristics, in order to provide a player with more control of the specific types of characters that the player would like to embody. One would be motivated to combine the references in order to provide a player with more control of the specific types of characters that the player would like to embody. This would allow a player to ability to enjoy the game longer since a player could play the same scenario with different characters. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate the ability to select game characters into the shooting game of Lebensfeld and Jacobsen in order to allow a player to enjoy the game longer.

Referring to claim 2, Lebensfeld discloses the game data input is a code and the internal processor is configured to retrieve corresponding detailed instructions from a memory corresponding to the code.

Referring to claim 3, Lebensfeld discloses a trigger configured to activate the state of emission of the beam so as to indicate the weapon is being fired by varying the encoding of the infrared beam.

Referring to claim 5, Lebensfeld in view of Jacobsen disclose the electronic toy gun comprises a detector for detecting an encoded infrared beam of an opponent and wherein the processor is programmed to detect characteristics of a game character corresponding to the encoded infrared beam of the opponent and to compare the characteristics of the game character corresponding to the game data input with the characteristics of a game character corresponding to the encoded infrared beam of the opponent in order to determine an outcome of an engagement with the opponent.

Referring to claim 8, Lebensfeld discloses comprising a feedback device configured to provide variable feedback corresponding a measure of a player's game condition, wherein the internal processor is further configured to calculate the measure of the player's game condition.

Referring to claims 12-13, Lebensfeld discloses that the game data input device comprises a card reader wherein the card reader is configured to read a card that includes game data, the card being a PC-card (11:16-23).

Claims 14 and 16-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lebensfeld in view of Jacobsen as applied to the claims above, and further in view of Wong et al. (U.S. Patent No. 4,802,675; hereafter "Wong").

Lebensfeld in view of Jacobsen disclose a toy gun game, wherein the toy gun detects a light beam, but does not disclose that the beam detector detects the strength of the beam. However, Wong discloses a toy gun game where the beam detector determines the strength of the beams (5:35-46) in order to determine actual hits and misses. One would be motivated to combine the references in order to make the game more challenging and to correctly determine a hit between pointing beams and actual hits. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate Wong's determination of beam strength into the toy gun game of Lebensfeld and Jacobsen in order to make the game more challenging and to correctly determine a hit between pointing beams and actual hits.

Claims 16-18 correspond in scope to a toy gun game set forth for use of the toy gun game listed in the claims above and are encompassed by use as set forth in the rejection above.

Response to Arguments

Applicant's arguments with respect to claims 1-3, 5, 8-14 and 16-18 have been considered but are moot in view of the new ground(s) of rejection.


Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Aaron J. Capron whose telephone number is (703) 305-3520. The examiner can normally be reached on M-Th 8-6.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tom Hughes can be reached on (703) 308-1806. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1148.

ajc


S. THOMAS HUGHES
SUPERVISORY PATENT EXAMINER
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